

UNITED STATES

v.

KINSLEY RANCH RESORT, INC., ET AL.

IBLA 72-139

Decided April 16, 1975

Appeal from decision of Chief Administrative Law Judge L. K. Luoma dismissing a mining claim contest complaint.

Affirmed.

1. Mining Claims: Discovery: Generally -- Mining Claims: Lode Claims

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

2. Evidence: Generally -- Mining Claims: Discovery: Geologic Inference

Nonrepresentative mineral samples alone cannot prove the existence of valuable mineralization exposed within a vein. If, however, other evidence establishes such mineralization, the samples may be given some weight to support geological inferences of the value of a lode mining claim.

3. Evidence: Burden of Proof -- Mining Claims: Contests

The fact that much of the evidence that supports a mining claimant's position in a mining claim contest is presented by

the Government, rather than the claimant, does not mean that the claimant's burden of proof has not been met, because the entire evidentiary record must be considered in weighing the evidence and not simply the claimant's evidence alone.

4. Evidence: Generally -- Mining Claims: Contests

Where the preponderance of the evidence in a mining claim contest supports an Administrative Law Judge's dismissal of a contest complaint, that decision will not be disturbed upon appeal.

APPEARANCES: Anthony D. Terry, Esq., Dowdall, Harris, Hull & Terry, Tucson, Arizona, for the Contestees; Richard L. Fowler, Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for the United States, Contestant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The United States has appealed from a decision of L. K. Luoma, now Chief Administrative Law Judge, dated September 23, 1971, which dismissed the Government contest complaint filed at the request of the United States Forest Service. The complaint charged a lack of a mineral discovery within the limits of the Berendo lode claim and that the land within the claim is nonmineral in character. The complaint requested that the claim be declared null and void. The Judge found that a prudent man would be justified in spending money on a mining operation within the claim.

The claim was located May 23, 1959, and embraces approximately 15.8 acres within the Arivaca Mining District within the Coronado National Forest, Arizona. The chain of ownership of the claim includes a conveyance from Mr. and Mrs. Cecil J. Creese on April 25, 1967, to the Kinsley Ranch Resort, Inc. The Kinsley Ranch Resort, Inc., is a family corporation of Mr. and Mrs. H. A. Tidmore, Sr., and their son, H. A. Tidmore, Jr. On August 24, 1970, Watkin Jackson acquired an interest in the claim during the course of hearings in this contest and was made a party contestee on October 22, 1970.

In this appeal, there is no contention that the Judge erred in stating the law regarding discovery under the mining laws; there are only contentions that he erred in applying the facts.

[1] The long-standing test of discovery of a valuable mineral deposit within a lode claim is whether there is physically exposed

within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine. Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912); Converse v. Udall, 399 F.2d 616, 619 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

In his decision the Judge discussed the evidence concerning the workings on the claims, samples taken from the claims, and the assay values of the samples. He concluded that while samples numbered 101-108 were derived from selected materials, not in place, they rather uniformly and strongly suggest the presence of considerable mineralization on the claim. He also concluded that representative samples 167, 196, 197 and Exhibit I are "substantial evidence" that there is mineralization in place of sufficient value to return a profit to a one-man type operation.

Appellant contends that the Judge erred in three respects: (1) the Judge should have given no weight to the nonrepresentative samples of selected material, and should have totally disregarded them; (2) samples 167, 196, 197 and Exhibit I are not substantial evidence of mineral in place; and (3) the contestees failed to meet their burden of proof.

The contestees have answered, generally contending that the Judge's decision should be upheld.

The evidence establishes that there are quartz veins extending through the claim and that some mineralization has been found in those veins. Appellant's contentions go to the issue of whether there has been sufficient mineralization found to satisfy the prudent man test of Castle v. Womble, 19 L.D. 455, 457 (1894), as applied to lode claims in Jefferson-Montana Copper Mines Co., supra, and as further discussed in subsequent decisions especially, United States v. Adams, 318 F.2d 861 (9th Cir. 1963); Converse v. Udall, supra. See also United States v. Coleman, 390 U.S. 599 (1968), emphasizing that expected profitable extraction and marketing of the mineral is an inherent aspect of the prudent man test for mining claims generally.

Most of the reports of assays of samples from the claims were submitted by the Government's witness, a qualified mining engineer, Jack McK. Pardee. The Judge summarized the assay values of the samples submitted by the Government from the seven exposed workings on the claim at the time of the engineer's five examinations of the claim. The values reflect the price of gold in 1969 and 1970, namely, \$35 per ounce. We take official notice of the fact, 43 CFR 4.24(b), that since that time the price of gold has risen and is

now approximately five times greater than it was then. This makes a substantial difference in evaluating the evidence in this case. The land has not been withdrawn, and therefore the date of discovery and mineral values are not controlled by any past point in time.

Appellant concedes that samples 167, 196 and 197 are representative samples, but denies that they and Exhibit I are substantial evidence that there is valuable mineral in place, as found by the Judge. By taking five times the values of those samples at the time of the hearing, those samples now reflect approximate mineral values per ton as follows: 167 -- \$91; 196 -- \$80 plus; 197 -- \$105 plus; and Exhibit I (a sample taken by Watkin Jackson from a new vein exposed after the mineral examinations by the Government witness) -- \$525 plus. Other samples deemed to be representative by the Government's witness would show present approximate values as follows: 168 -- \$7.50; 169 -- \$5.75; 182 -- \$40; 183 -- \$20.50; 184 -- 5.75; and 185 -- \$14.50. A mean average of those six samples would be over \$15 at present values. With samples 167, 196 and 197, added, the mean average now would be over \$40 per ton for the nine concededly representative samples.

[2] Other samples which appellant contends were selected samples and not representative of actual mineral values in place are generally substantially higher than this \$40 -- plus average for the representative samples. We do not agree with appellant's contention that nonrepresentative samples must be totally disregarded in all circumstances. However, we also disagree with the Judge to the extent he may have considered the nonrepresentative samples alone as proof of "considerable mineralization on the claim." It is true, as appellant contends, that nonrepresentative samples do not prove in-place mineral value, or demonstrate that the veins bear valuable minerals. By themselves nonrepresentative samples cannot prove the existence of valuable mineralization exposed within a vein. Cf. United States v. Harper, 8 IBLA 357 (1972); United States v. Taylor, A-30776 (October 6, 1967). However, if other evidence establishes such mineralization, selected and cobbled samples may be given some weight to support geological inferences of value. Thus, although evidence of working mines in the area, similarity of geological formations on the claim which established valuable mineral deposits in the area, and other facts, may not be used to establish the fact of valuable minerals within a given claim, if minerals are proved to exist within that claim, the facts to support geological inferences may be used in estimating the extent and value of the exposed deposit. United States v. Relyea, A-30909 (June 25, 1968), aff'd, Relyea v. Udall, Civil No. 3-58-20 (D. Idaho, February 9, 1970). The evaluation and use of nonrepresentative samples, however,

must be made with care as the potential for drawing misleading inferences is greatly enhanced compared with evaluations made from mineral exposures within the veins themselves.

After reviewing all of the evidence in this case and giving some, but limited weight, to the nonrepresentative samples to support geological inferences as to the possible value of the deposit, we discern no adequate reason for overturning the Judge's dismissal of the complaint. Clearly there is mineralization within the claim. The assays of the representative samples indicate that the values may be high enough to support the costs of a mining operation. Mr. Pardee, the Government witness, estimated mining and milling costs at the claim to be \$13 per ton (Tr. 233), or approximately \$21 when adding additional charges for transportation to a smelter (Tr. 245-246). This estimate was based upon an underground mining system. He admitted that strip mining was possible with considerably less cost (Tr. 117). Watkin Jackson testified the cost would be \$5 or \$6 per ton (Tr. 251). The record affords no evidence upon which an accurate estimate of the quantity of the expected mineralized tonnage may be based. However, testimony by contestee's witnesses indicates sufficient mineral within the claim to support a small one-man type mining operation for some years. The finding of the new vein by Watkin Jackson with its high mineral values, which was unrebutted by the Government, tends to support that testimony.

It is true, as appellant contends, that the mining claimant has the ultimate burden of proof to show by a preponderance of the evidence that there has been a discovery of a valuable mineral deposit within a claim. United States v. Taylor, 19 IBLA 9, 82 I.D. ___ (1975). The fact, which appellant emphasizes, that most of the assay reports of samples came from the Government rather than the claimant, does not mean that the claimant's burden has not been met where much of the Government's evidence supports the claimant's position. In weighing the evidence, the entire evidentiary record must be considered and not simply the contestees' evidence alone. Id. Therefore, based upon the present state of the record, we conclude that the preponderance of the evidence in this case supports the Judge's decision in dismissing the Government's complaint.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

